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No. 99-1613

Supreme Court, U.S.
FILED
NOV 13 2000

In The

Supreme Court of the United States

ROBERT SHAW; LARRY BEARLEY; MICHAEL MAHONEY; MYRON BEESON; AND RICHARD S. DAY,

Petitioners,

v.

KEVIN MURPHY,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed April 6, 2000
Certiorari Granted September 26, 2000

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Oct. 24, 1995	Complaint for declaratory and injunctive relief. (mgs)
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Feb. 26, 1996	Order by Judge Charles C. Lovell adopting findings and recommendations motion FINDINGS AND RECOMMENDATION [6-1], denying deft's motion to dismiss [5-1] (cc: Renz, Ohler, LBE, CCL) (dmz)
March 14, 1996	ANSWER by defendants to [3-1]; jury demand (mgs) [Entry date 03/15/96]
May 31, 1996	STATEMENT of uncontroverted facts by plaintiff in support of [13-1] (mgs) [Entry date 06/10/96]
May 31, 1996	AFFIDAVIT of Kevin Murphy re [13-1] (mgs) [Entry date 06/10/96]
July 8, 1996	MOTION by defendants for summary judgment (mgs) [Entry date 07/17/96]
Aug. 2, 1996	STATEMENT of disputed issues by plaintiff in support of [32-2] (mgs) [Entry date 08/07/96]
Aug. 2, 1996	AFFIDAVIT of Pat Tracy re [32-2] (mgs) [Entry date 08/07/96]
Aug. 2, 1996	Supplemental AFFIDAVIT of Kevin Murphy re [32-2] (mgs) [Entry date 08/07/96]

Aug. 2, 1996	REQUEST by plaintiff for judicial notice (mgs) [Entry date 08/07/96] [Edit date 03/05/97]
Aug. 2, 1996	MEMORANDUM/BRIEF by plaintiff in support of request to take judicial notice [37-1] (mgs) [Entry date 08/07/96] [Edit date 03/05/97]
Feb. 26, 1997	FINDINGS AND RECOMMENDATION by Magistrate Judge Leif B. Erickson concerning motion for summary judgment [24-1], recommending it be granted as to pltf's claim of denial of access to the courts & the balance denied; motion for summary judgment [13-1], recommending it be denied; and ORDER that pltf's motion to certify class [16] is DENIED. Objections to F/R due date: 10 days after receipt. (cc: all counsel) (mgs) [Entry date 03/05/97]
April 3, 1997	OBJECTIONS by defendant to Findings and Recommendation [40-1] (dmz) [Entry date 04/04/97]
April 3, 1997	OBJECTIONS by plaintiff to Findings and Recommendation [40-1] (dmz) [Entry date 04/04/97]
Sept. 10, 1997	ORDER by Judge Charles C. Lovell granting Deft's motion for summary judgment [24-1], Denying Pltf's mtn for class certification, denying Pltf's mtn for summary judgment [13-1], adopting FINDINGS AND RECOMMENDATION [40-1], Pltf's complaint is dismissed and case terminated (cc. Renz, Ohler, CCL, GR, State Reporter, Frank Adams) (tlh) [Entry date 09/23/97]

Sept. 23, 1997	JUDGMENT by Judge Charles C. Lovell – Defts' mtn for sum jgm is granted, pltf's mtn for sum jgm is denied. Pltf take nothing, complaint dismissed, and all relief is denied. Case terminated J/O Book Vol 22, pg 686 (cc: Renz, LBE, Ohler, CCL, GR) (tlh) [Entry date 09/24/97] [Edit date 09/24/97]
Oct. 23, 1997	NOTICE OF APPEAL by defendant from Dist. Court decision, [52-2] and order [cert copies to Renz, Ohler, Court of Appeals) (tlh) [Entry date 10/27/97]
Oct. 31, 1997	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): No. Setting schedule as follows: appellant's opening brief is due 12/10/97; appellees' brief is due 1/9/98; appellants' reply brief is due 1/23/98; [97-35989] (sm)
March 2, 1999	Filed order (Deputy Clerk: GB) The DC indicated that aplt Kevin Murphy had been released on parole. See order at 2 (D. Mont. filed 9/10/97). Because Mr. LMurphy's release on parole raises issues of mootness, see e.g. Reimers v. Oregon, 863 F.2d 630, 632 (9th Cir. 1988), he is hereby directed to inform this court, within 7 days of filing of this order, of his current status: Is he currently incarcerated? If so, where? Is he currently charged or has he been convicted of felonies allegedly committed subsequent to his release on parole? Has his parole been revoked? (phoned out to aplt counsel) [97-35989] (em)

March 9, 1999	Filed Appellant's (faxed) response to clerk order setting response; served on 3/5/99 FAXED PANEL [97-35989] (hard copies received 3/9/99) (em)
March 12, 1999	ARGUED AND SUBMITTED TO Betty B. FLETCHER, Stephen R. REINHARDT, Sidney R. THOMAS [97-35989] (jmk)
Nov. 4, 1999	FILED OPINION: REVERSED and REMANDED (Terminated on the Merits after Oral Hearing; Reversed, Written, Signed, Published. Betty B. FLETCHER, author; Stephen R. REINHARDT; Sidney R. THOMAS.) FILED AND ENTERED JUDGMENT. [97-35989] (em)
Nov. 17, 1999	Filed motion and deputy clerk order: (Deputy Clerk: EM) granting aples' motion & order to extend time to file a petition for rehearing [3793263-1] petition for rehearing due 11/26/99. (Motion recvd 11/17/99) [97-35989] (em)
Nov. 26, 1999	[3798457] Filed original and 50 copies Appellees' petition for rehearing with suggestion for rehearing en banc 13 p. pages, served on 11/24/99 PANEL AND ACTIVE JUDGES [97-35989] (em)
Jan. 7, 2000	Filed order (Betty B. FLETCHER, Stephen R. REINHARDT, Sidney R. THOMAS): The petition for rehearing is denied and the petition for rehearing en banc is rejected. [97-35989] (em)
Jan. 18, 2000	MANDATE ISSUED [97-35989] (jjf)

April 12, 2000	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 99-1613 filed on 4/6/00. [97-35989] (em)
Oct. 2, 2000	Received notice from Supreme Court, petition for certiorari GRANTED on 9/26/00. Supreme Court No 99-1613 (PANEL) (em)

MONTANA STATE PRISON
POLICY STATEMENT

TITLE: INMATE DISCIPLINARY POLICY

NUMBER: MSP 15-001

EFFECTIVE DATE: January 1, 1985
REVISED: January 8, 1988 – Rev. 1
September 1989 – Rev. 2

AUTHORITY: MSP 01-001, Organization and Responsibility

OBJECTIVE: To provide a means of maintaining discipline and enforcing necessary rules within the institution: to ensure that prisoners are provided fair, timely, and impartial disposition of charges alleging violations of rules, based on proceedings that conform to state statutes, administrative rules, and due process requirements for prison disciplinary matters, and to set forth certain other possible consequences of misconduct.

POLICY: The object of the disciplinary policy is to correct behavior with the least severe actions necessary to achieve that end. Rule violations are divided into three categories. A summary action results when the inmate admits violating a rule and agrees to a summary disposition, thereby waiving his right to a hearing. A Class III violation is a minor violation, and the hearing is handled by the Housing Unit Team. Whenever a Class II or III offense is alleged to have been committed, the accused inmate shall be subject to the institutional disciplinary proceedings as outlined in this policy.

DEFINITIONS: As used in this policy, the following definitions apply:

Class II: Those institutional infractions which are termed a major misconduct and are considered serious.

Class III: Those institutional infractions which are termed a minor misconduct and are considered less serious.

PROCEDURES:

A. General Provisions:

Following are descriptions of prisoner behavior which is prohibited and subject to disciplinary sanctions. The left-hand column lists and defines the violation. Any behavior that fits the definition is misconduct. In the right-hand column are specific examples of behavior fitting under the rule violation. These are just *examples*. Other actions that fit the violation definition are also misconduct even though they are not mentioned in the right-hand column. The violations are divided into major and minor misconduct.

In addition to the violations which follow, three other kinds of charges are possible: (1) Accomplice; (2) Attempt, or (3) Conspiracy to commit a specific violation. The first number of the code for Accomplice to any rule violation should be number 1. The first number of code for Attempt should be number 2, and the first number of the code for Conspiracy is number 3. (Example: Attempted Escape would be coded 207).

1. **Accomplice** – a prisoner who assists another to commit a specific misconduct or, after it is committed, conceals the violation from the authorities.

2. **Attempt** – a prisoner intends to commit a specific rule violation and does something towards committing it, even though he may not have succeeded.

3. **Conspiracy** – a prisoner intends to commit a specific violation and agrees with at least one other person to commit the violation. No action is necessary.

Violations marked with an asterisk (*) are mandatory "Temporary Lockup" charges, except that the Shift Commander may at his discretion place the inmate on present status if he determines that the inmate is not a threat to the security and orderly operation of the institution. All charges not marked with an asterisk are normally non-lockup offenses.

Temporary Lockup: No inmate shall be disciplined by segregation or otherwise until after a hearing as described in these rules, unless it is necessary to preserve the immediate security or stability of the institution. Violations marked with an asterisk (*) are mandatory "temporary lock-up" charges as it is determined these offenses constitute a threat to the security and orderly operation of this institution.

Many rule violations necessarily include other less serious violations. A lesser included violation would contain some but not all elements of the greater charge. For example, the "lesser included" violations of escape are planning and/or attempting escape. If an inmate is charged with misconduct, and the evidence does not support the particular violation charged but does establish a lesser included violation the Hearing Officer has the authority to find the inmate guilty of the lesser included violation.

B. Class II Violations and Descriptions:

001 *Committing Homicide:
Causing the death of another person by any means.

002	***Assaulting Another Person**: Physical attach [sic] on, or intentional non-consensual contact of another person, done either in anger, or with the purpose of abusing or injuring another. Injury is not necessary, but contact is.	Attack by one or more persons; striking with feces or other objects; physical resistance of, or interference with an employee. (Note that the victim of an assault should not be charged with a violation of this rule.)
003	***Fighting with Another Person**: Physical confrontation between two or more persons, including a swing and miss, done with anger or intent to injure.	Fight between inmates, whether with fists, broom handles, or other weapons.
004	***Threatening Another Person with Bodily Harm**: Words, actions, or other behavior expressing an intent to injure, which intends to place another in fear of being assaulted; includes attempted assault.	Threats of sexual assault made by one inmate to another inmate; writing threatening letters to another person.
005	**Felony**: Any act that would be a felony under state or federal law is also a major misconduct.	45-5-202 Aggravated Assault.

006	***Sexual Assault**: Sexual penetration of, or sexual contact with another person without that person's consent; non-consensual physical contact for sexual purposes.	Rape; intentional touching of sexual area (e.g., buttocks, breasts, genitals) without consent; kissing or embrace without consent of one who is kissed or embraced.
007	***Escape; Attempt to Escape**: Leaving or failing to return to lawful custody without authorization.	Leaving from Montana State Prison, Swan River Forest Camp, pre-release center, or trip to hospital; hiding from authorities, even if still on prison property, would be Attempted Escape (#207).
008	***Disobeying a Direct Order**: Refusal or failure to follow a valid, reasonable order. Violation of an institutional policy not specifically enumerated here.	Refusal to submit to a shakedown; refusal to lock up when ordered to do so. Refusal to give name and number to a state employee; refusal to give a UA upon request; repeated violation of posted Housing Unit Rules.
009	**Insolence**: Words, actions or other behavior which is intended to harass or cause alarm in an employee.	Cursing; abusive language, writing or gestures directed to an employee.

010	**Counterfeiting, Forging, or Unauthorized Reproduction of any Signature, Document, Article of Identification, Money, Security, or Official Papers**: Knowingly possessing a falsified or altered document; altering or falsifying document with the intent to deceive or defraud.	Possession of furlough or parole papers, etc., which is represented to be true. Possession of an altered identification card.
011	***Incite to Riot or Strike, Rioting or Striking**: Encouragement of actions to disrupt or endanger the institution, persons or property; participating in such action.	Encouraging a group demonstration or participating; hostage taking.
012	***Possession of Dangerous Contraband**: Unauthorized possession of weapons, explosives, acids, caustics, materials for incendiary devices or escape materials; possession or "critical" tools and materials as defined by policy.	Gasoline, sulfuric acid, lye, prison-made knives, pipe bomb.

013	**Substance Abuse**: Possession, use, selling or introduction, or under the influence of any intoxicant, inhalant, controlled substance or imitation (as defined by Montana statutes), alcoholic beverage, marijuana, or any other substance which is used to cause a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulling of the senses or nervous system; unauthorized possession of prescription medication; possession of narcotic paraphernalia.	Possession and/or attempt to sell medication controlled by the Infirmary, narcotic paraphernalia including such items as needles, syringes, roach clips, pipes or imitation controlled substances.
014	***Setting a Fire**: Intentionally or recklessly starting a fire.	Setting books, blankets, or mattress on fire.
015	**Possession of Money or Currency**: Possession of unauthorized amounts of cash or money from an unauthorized source. Money is defined as either cash or negotiable instrument.	Any cash over the sum of $1.00.

016	**Destruction of State Property**: Any destruction, removal, alteration, tampering, or other misuse of state property which has a replacement value of more than $5.00.	Tampering with or blocking any security or locking device, breaking windows, destroying blankets or mattresses.
017	**Unauthorized Area**: Being present in a room, cell or living quarter not assigned. Being anywhere without the proper authorization; being absent from where required to be.	Inmate in a cell that is not assigned to him. Inmate being present in the Gym when he is supposed to be in the Library. Inmate missing work assignment without permission.
018	**Fraudulent Claims for Inmate Programs**: False information for personal gain from good time earnings, inmate legal aid, or the contingency fund.	Knowingly providing false information to receive an indigent package.
019	**Theft or Possession of Stolen Property**: Any unauthorized taking of another person's property.	Possession of a staff member's personal items, or possession of any item reported to be stolen. Unauthorized possession of state materials, valued over $5.00.
020	**Bribery of an Employee**: Offering to give or withhold anything to persuade an employee to neglect or perform favors.	Giving or offering to give hobby to an employee.

021	**Gambling, Possession of Gambling Paraphernalia**: Playing games or making bets for money or anything of value or other materials commonly associated with wagering.	Possession of dice or betting slips; possession of lottery material; possession of sweepstake materials; participating in a sport pool for Canteen items.
022	**Interference With Due Process Hearings**:	Intimidating or tampering with a informant or witness, tampering with or destroying evidence; interfering with an employee in the process of writing a conduct report; making a false statement of misconduct against another inmate or staff which could result in a disciplinary action. (This violation should not be charged for as a retaliation for the writing of a grievance.)
023	**Sexual Misconduct**: Consensual touching of the sexual or other intimate parts of another person done for the purpose of gratifying the sexual desire of either party; indecent exposure; verbal abuse of a sexual nature directed at another person.	Excessive kissing, hugging or unauthorized touching of visitors. Possession of apparel designed for the opposite sex (e.g., nylons, and/or women's undergarments). Prostitution and/or sexual favors for personal gain.

024	**Failure to Abide by Consequences or Conditions of a Class II or III Disciplinary Disposition**: Breaking a condition of restitution or other sanction.	Failure to comply with a summary action; being in the dayroom when on a restriction or room lockup without permission.
025	**Conduct Which Disrupts or Interferes with the Security or Orderly Operation of the Institution**: Purposefully engaging in acts which disrupt the institutional security or orderly operation. Interfering with an employee in the performance of his/her duties.	Interfering with an institutional count; missing count; interfering with a shakedown; knowingly interfering with the intent to disrupt an employee conducting a count or performing any routine security procedure.
026	**Transferring, Soliciting, or Accepting Money or Personal Property**: From another inmate, visitor, staff, or general public without authorization. Value of $10.00 or more.	Inmates loaning a stereo or T.V. to another inmate. Receiving money or valuables from a visitor.
027	**Violating the Provisions of a 10-Day Furlough**:	Failure to report to a parole officer. Drinking or using drugs while on a 10-Day Furlough.

C. Disciplinary Report Procedure – Class II

1. Responsibility of Reporting Officer: In the event of any Class II offense infraction, the witnessing staff member will prepare and submit an infraction report. The infraction report will include the following:

a. The specific rule alleged to have been violated.

b. The time and place of the incident.

c. A detailed description of the alleged violation.

d. Names of witnesses.

e. A description of immediate action taken.

2. The description of the incident must include the actions of the inmate, not the writers conclusions about those actions. For example; "I saw Inmate X punch Inmate Y" should be written, not "I saw Inmate X fighting with Inmate Y". The Hearing Officer will decide if there is an assault, fight or horseplay. The writer of the report should describe what he saw, not his conclusions about what he saw.

3. All reports will be signed by the reporting staff member and submitted promptly to the Shift Supervisor. There is no precise time limit between the time a violation occurs and the time the report must be written, although a report should be written as soon as possible to ensure that events are accurately recorded and remembered. Whenever possible, it should be done before the end of the shift or on the next regularly scheduled shift.

4. The shift supervisor will gather all reports from the listed witnesses to the violation.

5. The reporting staff member will gather all evidence and submit it to his supervisor.

D. Processing of Reports and Written Notification:

Directly after a major misconduct rule infraction, the reporting staff member or Unit Supervisor will forward

the report to the Shift Commander. The Shift Supervisor will comply with the following procedures:

1. Screen the report to ensure that all necessary information is included and that the report is complete to the extent of clearly defining the fact that a Class II violation has been committed.

2. Ensure that all necessary evidence and reports are preserved and gathered.

3. Properly investigate the report, which will include informing the inmate so charged if mandatory temporary lockup is required. The Shift Supervisor, at his discretion, may place the inmate back in his respective unit if he feels the inmate is not a threat to the security and orderly operation of the institution.

4. Read the violation report to the inmate.

5. Complete the *Disposition of Inmate* portion of the *Major Misconduct Violation Report*.

6. If the inmate is placed on temporary lockup he will have a disciplinary hearing within 72 (seventy-two) hours, excluding weekends and holidays.

7. Inform the inmate of his right to a hearing investigator if one *is needed*. A hearing investigator *is needed* only if:

   a. The inmate is placed on temporary lock-up.

   b. The inmate cannot understand the charges and/or the disciplinary process.

8. Complete the notice of hearing section of the violation report. The shift supervisors will assign a date and time for the hearing in accordance with a schedule provided by the Hearing Officer for those inmates placed on temporary lock-up. Those inmates not placed on temporary lock-up will be notified by

the Hearing Officer of the time and place of their hearing.

9. Obtain the inmates signature on the violation report acknowledging he has received a copy. Note: If the inmate refuses to sign, note that he refused to sign and have another staff member witness that a copy of the report was given to the inmate.

10. All evidence will be properly marked and handled as outlined in this section and turned over to the Hearing Investigator or held in the evidence locker in Main Control.

11. Ensure that all personal belongings of the inmate being moved to the temporary lockup area are secured. If the inmate lived in a single cell, the housing unit staff will be notified to secure his cell within two hours of placement in temporary lockup. The Shift Supervisor will note the time and person notified in the disciplinary report. If the inmate lived in a double cell or other multiple housing area, the Shift commander or Unit Supervisor will designate no less than two officers to collect, inventory, and transport the belongings to the property storage area.

12. Ensure that all evidence, reports, and statements are completed and turned into the Hearing Investigator or Security Manager.

Conditions of Temporary Lockup: Conditions as defined in Policy MSP 15-002, Temporary Lockup.

E. Hearing Investigator Responsibilities:

It will be the duty of the hearing Investigator to investigate each major misconduct report when assigned by the Shift Supervisor of the Hearing Officer. The investigation will include the following:

1. Interview inmate; Pinpoint any discrepancies between inmate's version and the report. The inmate's statement, whether written by the inmate or transcribed by the investigator, must be signed by the inmate.

2. Take names and numbers of all witnesses requested and specific questions which the inmate wishes to have asked.

3. If there are discrepancies between the inmate's version and the misconduct report, or if further information is needed, interview and put statement of reporting officer in writing, with special attention to the areas of discrepancy. The fact that the inmate totally denies the report is not a discrepancy. A discrepancy means a disagreement as to words used, location of an act, time of day, color of work clothing, etc.

4. Interview requested witnesses and write down their statements. If any are not interviewed, or if questions which were requested are not asked, the reason must be given in writing. (Irrelevance or repetition are justifications for not taking statement, but insufficient time is not). The witness' statements, whether written by the witness or transcribed by the Hearing Investigator should be signed by the witness.

5. Interview all other known, relevant witnesses and write down their statements.

6. Obtain copies of documents requested by the inmate.

7. To the extent possible, resolve the factual questions in the different versions of the incident by checking out the inmate's alibi.

8. Be certain that all required physical evidence and documents are with the report, e.g., drug testing

report, picture of physical evidence if the evidence will not be at the hearing, room inspection sheet, etc.

9. The Hearing Investigator's report must be in writing, and all statements must be legible. If a witness' handwriting is illegible, the Investigator should type or print the statement (or ask the inmate to do this) and then have the inmate sign the statement.

10. Give witness' statements and misconduct report to Hearing Officer for scheduled disciplinary hearing.

11. If the Hearing Investigator promises confidentiality to a witness, it should be made clear in the written statement so that the Hearing Officer will not reveal that portion to the inmate. Confidentiality may be promised only when revealing the informant's identity would present a hazard to institutional or personal safety. The final determination as to whether confidentiality is required will be made by the Hearing Officer. This should be made clear to the witness.

12. Assign dates for hearings for those inmates not on temporary lockup and notify those inmates. Unless the inmate waives the 24-hour notice, the hearing will be no sooner than 24-hours from the time the inmate received his copy of the misconduct report.

F. Schedule of Hearings:

1. Inmates placed in temporary lockup will see the Shift Supervisor as soon as possible (see Page 8 number 3).

2. Inmates not placed in temporary lockup will be scheduled for a hearing within ten (10) days with allowance for the twenty-four-hour (24) written notification period.

G. Hearing Officer Responsibilities:

1. The Hearing Officer must determine if all necessary evidence has been gathered, weigh the credibility of all witnesses, determine the facts in the case, and decide whether those facts amount to alleged misconduct.

2. To be impartial, the Hearing Officer's decision will be based only on the evidence presented at the hearing and only on that evidence relating to the misconduct charge or its lesser included violation. Thus, the Hearing Officer shall not have any contact with witnesses except at the hearing.

3. The Hearing Officer shall allow the inmate to give his side of the incident, shall conduct the hearing in an orderly manner, and shall clearly describe the inmate's rights. (This does not mean, however, that the inmate must be allowed to talk indefinitely; relevance and repetition are always a consideration). The Hearing Officer shall explain to the inmate the decisions that are being made and the reason for them. This explanation will be given booth verbally and in writing.

G. Conduct of Hearing:

1. The Hearing Officer is in charge of the hearing and is entitled to respectful behavior from all persons present. Anyone – staff, inmate, or observer – who does not follow the direction of the Hearing Officer and disrupts the proceedings, may be requested to leave. The Hearing Officer cannot be forced to decide a case on insufficient information. The Hearing Officer has the authority and discretion, as well as duty, to re-list a case and order further investigation when warranted. If the hearing is continued to a later date, the

Hearing Officer may continue the temporary lockup, or release those on temporary lockup as he deems necessary.

2. All disciplinary hearings will be held in the hearing room scheduled by the Hearing Investigator.

3. The Hearing Officer will assure that the accused inmate is competent to understand the charge(s) against him, the proceedings that are taking place and that the inmate is able to participate therein. He may order a postponement of the hearing to secure a report on the competence of the inmate, or take such action as will assure the fairness and orderliness of the hearing.

4. The accused inmate shall be present at all stages of the hearing. The opportunity to be heard in person is the inmate's right. He may waive this and any other right, as long as he understands what the waiver means. The inmate may not be forced to have a hearing or to make a statement if he does not wish to.

   If an inmate fails or refuses to appear at a hearing after proper notice has been given, the Hearing Officer may make a decision on the basis of the misconduct report and any other available evidence and may find the inmate guilty. The Hearing Officer may make a finding of guilty if the evidence supports the charge, and may impose a sentence. Conversely, if the evidence does not support the charge or a lesser violation, the inmate must be found not guilty – even though he has failed to appear. The Hearing Officer must note the inmate's failure or refusal to appear and note that proper notice was given. Even if an inmate waives his right to be present at the hearing or fails to appear, he will still be given a copy of the misconduct hearing report.

5. Due to the availability of a hearing investigator to interview and obtain statements from witnesses, the physical presence of a witness at a hearing will normally not be necessary. A complete written statement may be obtained from the witness. The Hearing Officer may, in certain situations, request a witness to personally appear at the hearing to present his testimony or respond to questioning by the Hearing Officer. If direct eye-witness testimony conflicts, the Hearing Officer should interview the witnesses involved. The personal appearance by a witness at a hearing is a matter within the discretion of the Hearing Officer.

   Any failure to call a witness or to ask questions presented by the inmate to a witness must be noted in the record, and the Hearing Officer must give specific reasons for the decision to exclude those questions or witnesses.

6. The Hearing Officer must reach a decision on only the evidence presented at the hearing and only that evidence which is related to the specific misconduct charged. This decision shall be in writing and state briefly the specific evidence relied on to reach the finding of guilty or not guilty.

7. If the inmate is found guilty, the Hearing Officer may review the inmate's file, allow the inmate an opportunity to comment on the sanctions, and consider any other relevant information in determining what punishment is appropriate. Should the guilty finding require that a previously suspended sentence now be imposed by the Hearing Officer, it must also be imposed and added to the new sentence. Once the sentence is noted on the hearing report, the Hearing Officer shall sign the report and have the inmate sign it.

8. If requested by the inmate, the Hearing Officer will advise him of the appropriate appeal procedures.
9. If an inmate is found not guilty, the inmate shall be reinstated to his previous status, and all reports pertaining to the charges shall be expunged.

H. Hearing Officer Authority:

For all major misconduct (Class II) Offenses as outlined in this section, the following disposition (s) may be imposed:

1. Refer to federal or state authorities for possible prosecution.
2. Confinement in the Detention area for a period not to exceed ten (10) consecutive days. Credit for time served on a temporary lockup status for the offense under consideration may be granted at the Hearing Officer's discretion.
3. Confinement in max custody for up to 30 days.
4. Loss of visiting privileges with a particular visitor or loss of all visiting privileges for up to 180 days for violations that occur in connection with the visiting procedures.
5. Confinement to room or cell for not more than 15 days. Inmates so confined may participate in work or school assignments, visits and normal meal periods. The Hearing Officer may remove televisions, radios and other personal property during these 15 days.
6. The Hearing Officer may confiscate TV's, radios or other personal property used to conceal controlled substances or other contraband.
7. Restitution for any property not exceeding the sum assessed by the Associate Warden of Administration.

8. Recommendation to the appropriate reclassification committee for reconsideration or review of custody classification and/or program changes.
9. Recommendation to the Warden for forfeiture of earned good time.
10. Loss of any privilege created by policy for violations that occur in connection with an institutional policy.
11. Increase in custody. Inmate will be removed from his assignment if the new custody level does not allow the inmate to be assigned to a certain area. (Reviewed by the classification committee in a period not to exceed 30 days.)
12. "Unassigned unsatisfactory status" for violations that occur in connection with an inmate's assignment. (Reviewed by the classification committee in a period not to exceed 30 days.)
13. Suspend the sanction imposed for a period not to exceed six (6) months pending good behavior.
14. A combination of the above.
15. Reduction of the charge to a lesser included charge as long as the evidence supports such charges.

J. Appeal for Major Misconduct:

1. The inmate must notify the Hearing Officer at the time of the hearing of his intent to appeal.
2. An inmate may appeal the decision of the Hearing Officer to the Warden by filing a written request for review including his reasons for review with the Hearing Investigator within twenty-four hours, exclusive of weekends and holidays.
3. The clerk shall promptly transmit the request for review and the hearing records to the Warden.

4. The Warden or his designate shall act on the request within five (5) working days of his receipt by affirming the decision of the Hearing Officer (with reasons stated), reducing the severity of the sanctions imposed or vacating the judgement of the Hearing Officer. He may also increase the severity of the disposition imposed (with reasons stated).

5. Pending this decision from the Warden on his designate, the sanction shall be imposed on the inmate.

6. The inmate shall be notified in writing of the decision of the Warden.

7. If the inmate is not satisfied with the decision of the Warden, he may consider instituting appropriate litigation.

J. Class III Violation and Descriptions:

031	**Providing a False Statement:** Knowingly providing false information to an employee.	Giving a false name, number, or room/cell assignment. (Note that making false accusations of misconduct is included under the Class II violation – interference with due process, 022).
032	**Possession of Cash Under the Sum of $1.00:** Money is defined as either cash or negotiable instrument.	Any money under the sum of $1.00.
033	**Health, Safety, or Fire Hazard:** Creating a health, safety, or fire hazard by act or omission.	Dirty cell; lack of personal hygiene; smoking in an unauthorized area. Excessive accumulation of personal property.

034	**Contraband:** Possession or use of non-dangerous property which an inmate has no authorization to have and where there is no suspicion on theft.	Unauthorized items; anything with someone else's name or number on it; a TV or radio that is dismantled or otherwise altered.
035	**Destruction or Misuse of State Property with Value of Less than $5.00:** Any destruction, removal, alteration, tampering, or other misuse of state property which has a replacement value of less than $5.00.	
036	**Unauthorized Communication:** Any contact, by letter, gesture or verbally, with an unauthorized person or in an unauthorized manner.	Passing property on a visit either directly or through a third person. Communication with a visitor through any channel other than visiting room. Unauthorized use of telephone.
037	**Late for Schedule Work Assignment:**	Being late for work.
038	**Horseplay:** Any physical contact or attempted physical contact between two or more persons done in a prankish or playful manner, without anger or intent to injure or intimidate.	Towel-snapping at others, body punching, or attempted physical wrestling, grab-ass.
039	**Unauthorized Area:** Being present in an unauthorized area when such presence is not a threat to the institution.	The lesser charge of a major rule violation (017).

040	**Conduct With a Visitor:** Conduct with a visitor in violation of verbal or written orders.	Failure to follow visiting room rules where there is no threat to institution security.
041	**Violation of Posted Rules or Institution Policy:** Violation of posted rules in the housing unit or work area where there is no threat to institution security.	
042	**Loan Sharking:** Loaning of property or anything of value, for profit or increased return.	
043	**Transferring, Soliciting, or Accepting Money or Personal Property:** From another inmate, visitor or general public without authorization. With a value of less than $10.00.	Receiving or giving canteen to another inmate. Receiving property from a visitor. Accepting any item from the general public without authorization.

K. Disciplinary Report Procedure – Class III:

1. **Responsibility:** An employee who witnesses an apparent rule violation should first determine whether a warning or a summary action is appropriate. If such action is not sufficient, she/he should then check the list of misconduct violations to decide which is appropriate and write the misconduct report.

2. **Summary Action:** The reporting employee has an option of a summary action or a minor misconduct

report. If the reporting employee determines a summary action is sufficient, he/she may impose summary punishment not to exceed 24 hours' room lockup or eight hours extra dusty [sic] for minor misconduct – if the inmate signs a waiver of his right to a minor misconduct hearing. Non-dangerous contraband must be confiscated in conjunction with any of these summary punishments and turned over to appropriate institutional staff for proper disposition. A summary action slip, signed by the inmate, is needed to confiscate a TV, radio or any other personal property believed to be contraband (no shakedown slip is needed). A record of this action must be kept on file. If the inmate does not sign an offered summary action, the resultant rule infraction report shall be processed and heard as a "class III" – regardless of the charge, or the inmate's disciplinary record.

All Shift Supervisors and/or Unit Sergeants will be responsible for the proper handling and disposition of Class III violations reports.

3. **Procedure:** In the event a Class III report is written, the observing staff member will prepare and submit a misconduct report to his applicable supervisor. The report will include:

   a. The specific rule alleged to have been violated.

   b. The time and place of the incident.

   c. A description of the alleged violation.

   d. Names of the witnesses.

   All reports will be signed by the reporting staff member and submitted to the inmate's respective Housing Unit Sergeant or Unit Counselor.

4. After the report has been submitted, the Housing Unit Supervisor will:

   a. Screen the report to insure that all necessary information is included and that the report is complete and clearly defines that a minor misconduct violation has been committed.

   b. Ensure that all necessary evidence has been presented.

   c. Properly investigate the report, which will include discussing the report with the inmate so charged and informing him of the hearing date and time. A hearing will be held within ten (10) days with allowance for the twenty-four (24) hour notification period.

5. The hearing on a Class III will be in front of the Unit Counselor and Unit Sergeant. Agreement of these two on a finding of guilt is needed for a disposition. If the counselor and sergeant cannot agree on guilt, the finding is not guilty.

6. Disposition of minor misconduct will never be imposed without first holding a hearing with the inmate and informing him verbally of that decision and disposition.

7. The Unit Supervisor will ensure that the inmate signs the report.

8. **Sanctions:**

   a. Counseling, warning, or reprimanding the inmate(s) involved.

   b. Loss of any one or all recreation activities for a period of not more than five (5) consecutive days of scheduled activity.

   c. Restriction from the Commons/Hobby/Recreation area and/or Library for a period not to exceed five (5) consecutive days.

   d. Confinement to room, cell, or living area except for attendance at work, educational assignments, meals, visits for a period not to exceed five (5) consecutive days. The unit team may remove hobby or personally owned TV's, radios, and tape players during this confinement.

   e. Loss of phone privileges for a period not to exceed five scheduled calls, if there is a violation of the telephone policy.

   f. Pay restitution for damaged state property with a value of $5.00 or less.

   g. Termination of visiting privileges with specified individuals for a period not to exceed 30 consecutive days for first violation, 60 days for second violation and 90 days third violation, if there has been a violation of a visiting room regulation.

   h. Confiscate contraband items in violation of policy and where there is no suspicion of theft.

   i. Eight hours extra duty to be completed at the discretion of the Unit Sergeant.

9. **Appeals for Class III Impositions:** An inmate may appeal this decision to the Security Manager. In such cases, the inmate will be required to voice such intent to appeal to the Housing Unit Team at the time of the hearing. He will also be required to indicate this intent on the written infraction report before the signature is made. The appeal must be submitted within 24 hours.

If the inmate indicates on the report that he desires to appeal the decision of the Class III hearing, the respective Housing Unit Team members will forward the hearing report and the written appeal to the Security Manager. The Security Manager must respond to the appeal within five (5) working days. He may:

a. Affirm the decision of the Housing Unit Team.

b. Increase the severity of the action imposed by the Housing Unit Team.

c. Reduce the severity of the action imposed by the Housing Unit Team.

d. Vacate the judgment of the Housing Unit Team.

e. Reduce or change the charges to an appropriate Class III charge in line with the evidence present.

The sanction will be imposed pending appeal. There will be no other appeal of the Class III infraction. Class III reports will not be made a part of the permanent record. The Housing Unit Team may keep an informal record of Class III's for monitoring an inmate's progress in the unit.

APPROVED: /s/ Jack McCormick
JACK McCORMICK
WARDEN

DATE: 10/[Illegible]/89
JM/CKB/cmj

I _____ (Inmate Signature) MSP # _____ acknowledge by my signature here that I have received a copy of MSP 15-001, Inmate Disciplinary Policy on _____, 19___.

_____ (Staff Witness Signature)

MONTANA STATE PRISON
POLICY STATEMENT

TITLE: INMATE CORRESPONDENCE POLICY
NUMBER: MSP 16-001
EFFECTIVE DATE: February 11, 1985
REVISED: August, 1990
October, 1991
October, 1992
AUTHORITY: MSP 01-001, Organization and Responsibility DOI 506, Inmate Correspondence
OBJECTIVE: To establish regulations concerning inmate correspondence.
POLICY: Inmates shall be allowed to communicate and correspond with outside persons or organizations subject only to limitations necessary to maintain institutional order, security, and health. Correspondence between inmates and their families, friends, and other associates shall be encouraged.

I. PRIVILEGED CORRESPONDENCE

A. Privileged correspondence consists of mail from and to:

1. licensed attorneys;
2. state or federal court judges and their law clerks;
3. elected officials, state or federal;

4. Montana Defender Project, Montana Legal Services Association, State Bar of Montana, American Civil Liberties Union, Civil Rights Division and NAACP;
5. the Department of Corrections and Human Services Director, Deputy Director, Attorneys, Corrections Division Administrator, Deputy Administrator and the Community Services Bureau Chief;
6. bankruptcy court;
7. Department of Justice/Attorney General;
8. Medical Review Panel, and
9. Commission on the [sic] Practice of the Supreme Court.

B. Outgoing privileged correspondence:

1. shall indicate on the envelope the name and the official status of the addressee;
2. shall not be opened, inspected or censored in any manner, unless the conditions described in Section VI., A., of this policy exist, and
3. may be held for a reasonable period of time to allow verification of the addressee's status.

C. Incoming privileged correspondence:

1. shall indicate the name and official status of the sender on the envelope;
2. may be opened and examined for contraband only in the presence of the inmate addressee;
3. shall not be read by institution staff;
4. may be held for a reasonable period of time to allow for verification of the sender's status, and

5. from the Department Director, Deputy Director and Corrections Division Administrator shall be sealed with a unique seal and, providing that the seal is not broken, shall be delivered unopened to the addressee. If the seal has been tampered with, the letter will be forwarded directly to the Superintendent/Warden.

II. GENERAL CORRESPONDENCE

A. General correspondence consists of mail to and from persons not included in Section I., A., of this policy.

B. Outgoing general correspondence:

1. All outgoing mail may be stamped with the institution name and address.

2. Inmates shall be allowed to send letters to any person or organization, unless that person or organization has notified the institution that they object to receiving such mail.

3. Inmates shall be allowed to send as many letters as they wish, unless evidence related to institutional security, order or rehabilitation exists to justify a limit.

4. General population inmate mail shall not be opened, inspected or censored in any manner, unless the conditions described in Section VI, of this policy exist. Maximum Security mail will be sent from the unit unsealed and will be read.

5. Shall include the sender's name, number and complete return address.

6. Cassette tape correspondence is not allowed.

7. Inmates shall be allowed to send money only to those persons on that inmate's approved Correspondence/Visiting List.

C. Incoming general correspondence:

1. There shall be no limit on the amount of First Class mail an inmate is allowed to receive.

2. First Class mail:

a. may be opened and inspected for contraband;

b. must clearly state the inmate's name and identification number.

3. First Class mail may be read if:

a. it is from another correctional facility;

b. is being returned to the institution as undeliverable;

c. is addressed to Maximum Security or Administrative Segregation inmates, and/or

d. is believed to be in violation of this policy.

4. Incoming mail may also be read if there is reasonable suspicion to believe that the letter contains:

a. threats of physical harm against any person or threats of criminal activity;

b. blackmail or extortion;

c. contraband being sent in or out of the institution;

d. Plans to escape or assist another to escape;

e. Plans for activities in violation of institutional rules, such as riots;

f. Code or foreign language not understood by the reader;

g. Drugs or drug paraphernalia, and/or

h. Other material which would, if communicated, create a serious danger to the security of the institution.

5. If mail is read, the inmate will be notified and informed of the reason why and a written record shall be made consisting of:

a. the inmate's name and number;

b. sender's name and date of letter, and

c. the reason for reading the letter.

6. If any portion of a letter which is read contains any of the violations listed under Section II., C. 3-4, above, or contains any reference to a postal regulation violation, the letter may not be delivered and the inmate to whom it is addressed will be informed of the reasons for nondelivery and entitled to the provisions of Sections VI., of this policy.

7. Money received via first class mail must be in the form of a money order only. Money may be received from two sources only: immediate family members must purchase and send the money order, (i.e., mother, father, brother, sister, wife, children and/or ex-wife (only if they have custody of minor children), grandparents and step-parents if the inmate has spent the majority of his life with them); and approved business transactions, (for example, hobby craft purchases). Cash, personal checks or

money received in any other way, unless pre-approved by the appropriate Security Manager, will not be deliverable and will be processed as per Section VI, of this policy.

III. PACKAGES (Incoming)

A. Packages may be received from persons on the inmate's approved visiting list containing only the items pre-approved by the administration of the institution.

B. Contents of the package must be new and unused, and in the case of items on which the institution sets monetary value limits, the price tag or other evidence of value must be affixed.

C. Any item received, which would cause an inmate to exceed the personal possession limitation (see D. below) imposed by the institution, or any item whose value is in excess of the monetary value limit established by the institution for that item, will be considered undeliverable and processed as per Section VI., of this policy.

D. The following is a list of items pre-approved by the administration of the institution for an inmate to receive from persons on the inmate's approved visiting list: (This is also the maximum quantity that the inmate can have in his possession at any one time.)

1. *White* cotton briefs and *white* cotton undershirts. Pockets are okay. No nylon. No knit. No slogans. No logo/emblem (six of each).

2. Socks (six pairs only).

3. No boots or shoes unless they come directly from a retail or wholesale outlet. Inmates are

allowed two pair of shoes, can be a combination, i.e., one pair boots or shoes and one pair tennis shoes or two pair tennis shoes or two pair boots or shoes.

4. House slippers (one pair only).

5. Regular *cotton* sweatshirts and sweatpants (two of each). No hooded types; no dark blue or black or mixture of these two colors. No nylon type. (Small arm and leg stripes or manufacturer's logo/emblem, zippers and pockets are approved.)

6. Athletic type gym trunks (two pair only). No spandex, swimming suits or street shorts. (Leg stripe and/or manufacturer's logo/emblem and pockets are approved.)

7. Gloves (two pair only).

8. White, paisley blue or paisley red handkerchiefs (12 only).

9. Knit stocking cap, baseball hat (dark blue – one each). No emblems or logos.

*10. Prescription glasses, sunglasses (Maximum Security inmates can not have sunglasses) and contact lenses (one pair each). Saline solution and daily cleaner for contacts only.

11. Small religious medallions, (limit of two) (Maximum Security – limit one) valued under $75. (No necklaces or earrings.)

*12. Rings valued under $75 (two only). (Maximum Security inmates can only have one wedding ring.)

*13. Wrist, pocket or pen watches, valued under $75 (one only).

*14. New electric razor or beard trimmer (one only). *No battery operated.*

15. Waist trimmer and weight lifting belt (one each). Wrap around only.

16. Thermal underwear in solid white or gray (three pair only). *No other colors.*

17. Bath towels, hand towels, and wash cloths (two each). No beach towels.

18. Calculators, hand held only, no print-out (one only). Value of no more than $25.

19. Cribbage board, dominoes, checkers, chess set, scrabble and puzzle (one each). Value of no more than $25. Must be in sealed package. No electronic games.

20. Dark blue vest (one only) *for low security inmates only.*

* Only items allowable for inmates in the Maximum Security Unit.

E. Limits on incoming packages per month.

1. Maximum Security Compound – One package only from anyone on the approved Correspondence/Visiting List. This is not one package per person, but rather only one package per month from whomever.

2. High Security Compound – Two packages only per month from any one or more persons on the approved Correspondence/Visiting List.

3. Low Security Compound – Three packages only per month from any one or more persons on the approved Correspondence/Visiting List.

IV. PACKAGES (Outgoing)

A. Inmates can ship packages (at inmate's expense) only to persons on their approved Correspondence/Visiting List.

B. Inmates' visitors are allowed to pick up personal property after being approved by the Property Officer.

V. PUBLICATIONS

A. Inmates may receive books, magazines, newspapers or other printed matter, providing such material is sent directly by the publisher or an authorized retail outlet, and providing such material:

1. does not contain instructions for the manufacturing of explosives, weapons, drugs or drug paraphernalia;
2. does not advocate violence and is not of a type that has caused violence or disruption in similar institutions;
3. does not advocate racial, religious or national supremacy or hatred;
4. does not encourage behavior which is detrimental to rehabilitation such as gambling, illegal sexual activities or encouraging the commission of a crime;
5. does not violate any other existing institutional policy, and
6. is not the result of a contract purchase (no book clubs).

B. Inmates may receive advertising flyers, pamphlets, catalogs, promotional material and other bulk rate mail providing such material:

1. is addressed to one particular inmate;
2. meets all the conditions as outlined under Section IV., A., above.

C. A publication or bulk rate mail believed to be in violation of the policy, shall be processed as per Section VI, of this policy.

VI. TAPES

A. Inmates cannot send out taped correspondence without prior approval from the Deputy Warden.

B. Inmates may receive cassette tapes only from approved vendors and/or Canteen. Video tapes are not acceptable. (Inmates may have in their possession a maximum of 24 tapes.)

C. Cassette tapes may be received from a retail or wholesale outlet only. Individuals on an inmate's visiting correspondence list cannot send cassette tapes or order cassette tapes for an inmate.

VII. GENERAL CONDITIONS AND SPECIAL PROVISIONS

A. Incoming and outgoing mail may be opened, inspected and held if there are reasonable grounds to believe that the mail is being sent contrary to this policy by an inmate or a person outside of the institution.

B. When an inmate's mail is opened, inspected and held, the inmate will be notified and informed of the reason why and a written record shall be made consisting of:

1. the inmate's name and number;

2. sender's name and date of letter, and

3. the reason the mail was inspected and held.

C. If the mail is found to be in violation of this policy it will be considered undeliverable and processed as per Section VI., of this policy.

D. Indigent inmates will be provided necessary correspondence material, including stamps, as per the institution's Indigent Policy (MSP 12-002).

E. Air, certified, registered, over-sized and overweight mail services will be available providing the inmate pays for such services as per institutional procedure.

F. Nude photographs of persons who appear to be under the age of 16 may be held until proof of age is obtained.

VIII. DUE PROCESS

A. Contents of First class mail, publications, bulk rate mail, other printed material or package items believed to be in violation of this policy, shall be forwarded to the appropriate Security Manager for final decision. If that decision determines that the item in question is in violation of this policy, the material shall be held as evidence until the inmate is given an opportunity to request a hearing. If the inmate requests the hearing and the hearing upholds the decision of the Security Manager, the material held as evidence shall be disposed of in the following manner:

1. Returned to the sender at the inmate's expense, or;

2. Destroyed in the presence of two staff members, or;

3. Sent to a third party of the inmate's choosing at the inmate's expense, or

4. Donated to a charitable organization at the inmate's expense.

B. The inmate may appeal the decision of the hearing by notifying the Hearing Officer of his intent to appeal at the time of the hearing and by filing a written request for review to the Warden's Office within a period of (24) twenty-four hours, exclusive of weekends and holidays.

C. Undeliverable mail will not be stored at the institution, but may be retained as evidence until a hearing and possible appeal is concluded.

APPROVED:

/s/ Jack McCormick
JACK McCORMICK, WARDEN

DATED:

10/7/91

JM/BW/cj
10-7-91

MSP 16-001
Attachment #1

MONTANA STATE PRISON
MAIL REGULATIONS
(Revised 10-13-92)

I. INCOMING MAIL:

All incoming mail for inmates must be identified clearly with the name and prisoner identification number. There is no limit on the amount of incoming

first-class mail a prisoner may receive. All incoming mail shall be opened and inspected for money or contraband. Mail from other correctional facilities and mail to prisoners in Maximum Security and Administrative Segregation may be read.

II. **MONEY ORDERS:**
Money received via first-class mail must be in the form of a money order. *Cash* or *personal checks* are *not* deliverable. Inmates may receive money *only* from immediate family members or persons approved by the Superintendent/Warden, or his designee.

III. **PHOTOS:**
No photos with backing material. Nude photos of persons who appear to be under the age of 16 may be held until proof of age is obtained.

IV. **PACKAGES:**
Packages may be received from persons on the inmate's *approved visiting list* containing only the items *pre-approved by the administration of the institution.*

Contents of the package must be *new* and *unused,* and in the case of items on which the institution sets monetary value limits, the *price tag* or other evidence of value must be *affixed.*

The following is the list of items pre-approved by the administration of the institution an inmate is allowed to receive in a package from an approved visitor. Since the quantities listed are also the maximum quantities that the inmate can have in his possession at any one time, it is strongly recommended that the inmate be contacted prior to sending any package to determine if he is already at the maximum quantity limit. An inmate will not be allowed to receive any item that exceeds the maximum quantity limit.

1. *White* cotton briefs and *white* cotton undershirts. Pockets are okay. No nylon. No knit. No slogans. No logo/emblem (six of each).
2. Socks (six pairs only).
3. No boots or shoes unless they come directly from a retail or wholesale outlet. Inmates are allowed two pair of shoes, can be a combination, i.e., one pair boots or shoes and one pair tennis shoes or two pair tennis shoes or two pair boots or shoes.
4. House slippers (one pair only).
5. Regular *cotton* sweatshorts and sweatpants (two of each). No hooded types; no dark blue or black or mixture of these two colors. No nylon type. (Small arm and leg stripes or manufacturer's logo/emblem, zippers and pockets are approved.)
6. Athletic type gym trunks (two pair only). No spandex, swimming suits or street shorts. (Leg stripe and/or manufacturer's logo/emblem and pockets are approved.)
7. Gloves (two pair only).
8. White, paisley blue or paisley red handkerchiefs (12 only).
9. Knit stocking cap, baseball hat (dark blue – one each). No emblems or logos.

*10. Prescription glasses, sunglasses (Maximum Security inmates can not have sunglasses) and contact lenses (one pair each). Saline solution and daily cleaner for contacts only.

*11. Small religious medallions, (limit of two) (Maximum Security – limit on one) valued under $75. (No necklaces or earrings.)

*12. Rings valued under $75 (two only). (Maximum Security inmates can only have one wedding ring.)

*13. Wrist, pocket or pen watches, valued under $75 (one only).

*14. New electric razor or beard trimmer (one only). *No battery operated.*

15. Waist trimmer and weight lifting belt (one each). Wrap around only.

16. Thermal underwear in solid white or gray (three pair only). *No other colors.*

17. Bath towels, hand towels, and wash cloths (two each). No beach towels.

18. Calculators, hand held only not print-out (one only). Value of no more than $25.

19. Cribbage board, dominoes, checkers, chess set, scrabble and puzzle (one each). Value of no more than $25. Must be in sealed package. No electronic games.

20. Dark blue vest (one only) *for low security inmates only.*

* Only items allowable for inmates in the Maximum Security Unit.

D. **TAPES**

A. Inmates cannot send out taped correspondence without prior approval from the Deputy Warden.

B. Inmates may receive cassette tapes only from approved vendors and/or Canteen. Video tapes are not acceptable. (Inmates may have in their possession a maximum of 24 tapes.)

C. Tapes may be received from a retail or wholesale outlet only. Individuals on an inmate's visiting correspondence list cannot send cassette tapes or order cassette tapes for an inmate.

E. **PUBLICATIONS**

1. Inmates may receive books, magazines, newspapers or other printed matter, providing such material is sent directly by the publisher or an authorized retail outlet, and providing such material:

   a. Does not contain instructions for the manufacturing of explosives, weapons, drugs or drug paraphernalia.

   b. Does not advocate violence and is not of a type that has caused violence or disruption in similar institutions.

   c. Does not advocate racial, religious or national supremacy or hatred.

   d. Does not encourage behavior which is detrimental to rehabilitation such as gambling, illegal sexual activities or encouraging the commission of a crime.

   e. Does not violate any other existing institutional policy.

   f. Is not the result of a contract purchase (*no book clubs*).

Including anything in a prisoner's mail that is not pre-approved or authorized in these regulations will result in mail being held up and in some cases may result in costly postage expenses.

February 16, 1995

Dear Pat:

How ya doing? Sorry I haven't wrote before now. I been busy fighting my charges. Finally got eveything taken care of. I can't come up to max anymore. the lowside clerks go up there now. that's why I haven't called you out like I used to. I do want to help you with your case against Galle. It wasn't your fault and I know he provoked whatever happened! Don't plead guilty because we can get at least 100 witnesses to testify that Galle is an over zealous guard who has a personal agenda to punish and harrass inmates. He has made homo-sexual advances towards certain inmates and that can be brought up into the record. There are petitions against him and I have tried to get the Unit Manager to do something about what he does in Close II, but all that happened is that I recieved two writeups from him myself as retaliation. So we must pursue this out of the prison system. I am filing a suit with everyone in Close I and II named against him. So you can use that too!

Another poiont is that he grabbed you from behind. You tell your lawyer to get ahold of me on this. Don't take a plea bargain unless it's for no more time.

I seen Damie for a little while when I was out. I never came over to Butte much. Lenny is living in lower D still and I don't speak to him much. His sister did something to Ted from what I heard. I don't know what. Well I will write again when I get this thing against Galle finished.

Later. . . .

Murph

om Inmate Kevin Murphy
Legal Clerk

To: Pat Tracy
Max
Insti. Mail

MAJOR MISCONDUCT VIOLATION REPORT – CLASS II
INMATE NAME: Murphy, K. MSP# 12810

DATE: 2-17-95 TIME: 0745 PLACE OF INCIDENT: CV-II – Supervisors Office

ROOM OR CELL: LA-4 yrs HOUSING UNIT: CV-II ASSIGNMENT: Law Clerk #404

VIOLATION OF INMATE RULES AND REGULATIONS: #009-[illegible] – (Displaying any material of an offensive nature that makes reference to an employee of the D.O.C. – Abusive language, writing or obscene gestures.)

STAFF WITNESSES: 1. _____

2. _____

OTHER INMATES 1. _____

INVOLVED 2. _____

DESCRIPTION OF ALLEGED VIOLATION(S): While routinely monitoring institutional mail I (C.S. SHAW) noticed comments in a letter from Inmate Murphy to Inmate Tracy. In this letter, Inmate Murphy accused CO Galle of being an over zealous guard who punishes and harasses Inmates for a personal pleasure. Inmate Murphy also accused CO Galle of making homo-sexual advances towards Inmates. Inmate Murphy stated that CO Galle retaliated against Inmate Murphy by writing him up on two rule infractions. End of Report!

Copy of letter attached!

C.S. R. Shaw
REPORTING STAFF
MEMBER'S SIGNATURE

DISPOSITION OF INMATE:

( ) MANDATORY TEMPORARY LOCK-UP

(✓) RELEASE TO PREVIOUS STATUS

( ) OTHER _____

REASON: _____

DATE: 2-17-95 TIME: 1530 CELL SECURED ( ) YES

(✓) NO NOTIFIED: _____

INVESTIGATOR ASSIGNED BY

SHIFT LT. ( ) YES (✓) NO

[Illegible]
SHIFT LT.'S SIGNATURE

I HAVE RECEIVED A COPY OF THIS NOTICE AND HAVE BEEN INFORMED OF MY RIGHTS TO:

1. HAVE A HEARING (DATE) 3-2-95 TIME 0800-1500 PLACE High Support.
2. BE PRESENT AT THE HEARING AND PRESENT EVIDENCE ON MY OWN BEHALF

I UNDERSTAND, IF FOUND GUILTY, I WILL BE SUBJECT TO IMPOSITION OF THE SANCTIONS AS OUTLINED IN THE INMATE DISCIPLINARY POLICY.

[Illegible] _____ /s/ L. Ken Murhpy _____
WITNESS INMATE'S SIGNATURE/ MSP#

cc: 1. Records Office
2. Parole Board
3. Unit Counselor
4. Inmate

_____

MAJOR MISCONDUCT VIOLATION REPORT – CLASS II

INMATE NAME: Murphy, K. MSP# 12810

DATE: 2-17-95 TIME: 0745 PLACE OF INCIDENT: CV-II – Supervisors Office

ROOM OR CELL: LA-4 HOUSING UNIT: CV-II ASSIGNMENT: Law Clerk #404

VIOLATION OF INMATE RULES AND REGULATIONS: #022-Interference with Due Process Hearings: – Intimidating or tampering with an informant or Witness; making a false statement of misconduct against staff which would result in disciplinary action.

STAFF WITNESS: 1. _____

2. _____

OTHER INMATES 1. _____

INVOLVED 2. _____

DESCRIPTION OF ALLEGED VIOLATION(S): While routinely monitoring institutional mail I (C.S. SHAW) noticed comments in a letter from Inmate Murphy to Inmate Tracy concerning an incident that had occurred with an assault on CO Galle. In this letter, Inmate Murphy tries to persuade Inmate Tracy to pursue certain actions that may disrupt a court hearing in which Inmate Murphy is no part of. Jnmate Murphy states he tried to "do something" about CO Galle but He (Murphy) was retaliated against. There is no evidence of any of the statements in this letter to be fact. End of Report!

See Copy of letter which is attached!

C.S. R. Shaw
REPORTING STAFF
MEMBER'S SIGNATURE

DISPOSITION OF INMATE:

( ) MANDATORY TEMPORARY LOCK-UP

(✓) RELEASE TO PREVIOUS STATUS

( ) OTHER _____

REASON: _____

DATE: 2-17-95 TIME: 1530 CELL SECURED ( ) YES (✓) NO NOTIFIED: _____

INVESTIGATOR ASSIGNED BY

SHIFT LT. ( ) YES (✓) NO

[Illegible]
SHIFT LT.'S SIGNATURE

I HAVE RECEIVED A COPY OF THIS NOTICE AND HAVE BEEN INFORMED OF MY RIGHTS TO:

1. HAVE A HEARING (DATE) 3-2-95 TIME 0800-1500 PLACE High Support.

2. BE PRESENT AT THE HEARING AND PRESENT EVIDENCE ON MY OWN BEHALF

I UNDERSTAND, IF FOUND GUILTY, I WILL BE SUBJECT TO IMPOSITION OF THE SANCTIONS AS OUTLINED IN THE INMATE DISCIPLINARY POLICY.

[Illegible]
WITNESS

/s/ L. Kevin Murhpy
INMATE'S SIGNATURE/
MSP#

cc: 1. Records Office
2. Parole Board
3. Unit Counselor
4. Inmate

MAJOR MISCONDUCT VIOLATION REPORT – CLASS II
INMATE NAME: Murphy, K. MSP# 12810

DATE: 2-17-95 TIME: 0745 PLACE OF INCIDENT: CV-II – Supervisors Office

ROOM OR CELL: LA-4 HOUSING UNIT: CV-II ASSIGNMENT: Law Clerk #404

VIOLATION OF INMATE RULES AND REGULATIONS: #025 Conduct which disrupts with the orderly operation of the institution – knowingly interfering with intent to disrupt an employee performing any routine security procedure.

STAFF WITNESSES: 1. _____
2. _____

OTHER INMATES 1. _____
INVOLVED 2. _____

DESCRIPTION OF ALLEGED VIOLATION(S): While routinely monitoring institutional mail I (CS Shaw) noticed comments made by Inmate Murphy to Inmate Tracy. These comments are intended to persuade Inmate Tracy to perform certain actions to make a situation that Murphy is involved in look better. Inmate Murphy also stated "We must pursue this out of the Prison system." Inmate Murphy also stated "Well I will write again when I have this thing against Galle finished." Both statements are threatening. End of Report!

See attached letter.

C.S. R. Shaw
REPORTING STAFF
MEMBER'S SIGNATURE

DISPOSITION OF INMATE:

( ) MANDATORY TEMPORARY LOCK-UP

(✓) RELEASE TO PREVIOUS STATUS

( ) OTHER _____

REASON: _____

DATE: 2-17-95 TIME: 1530 CELL SECURED ( ) YES (✓) NO NOTIFIED: _____

INVESTIGATOR ASSIGNED BY

SHIFT LT. ( ) YES (✓) NO

[Illegible]
SHIFT LT.'S SIGNATURE

I HAVE RECEIVED A COPY OF THIS NOTICE AND HAVE BEEN INFORMED OF MY RIGHTS TO:

1. HAVE A HEARING (DATE) 3-2-95 TIME 0800-1500 PLACE High Support.
2. BE PRESENT AT THE HEARING AND PRESENT EVIDENCE ON MY OWN BEHALF

I UNDERSTAND, IF FOUND GUILTY, I WILL BE SUBJECT TO IMPOSITION OF THE SANCTIONS AS OUTLINED IN THE INMATE DISCIPLINARY POLICY.

_____ _____
WITNESS INMATE'S SIGNATURE/ MSP#

cc: 1. Records Office
2. Parole Board
3. Unit Counselor
4. Inmate

MONTANA STATE PRISON
DISCIPLINARY HEARING DECISION

DATE: 3/2/ 1995

INMATE'S NAME: Murphy Kevin AO# 12810

REPORTED VIOLATION(S): 009

✓ I DO UNDERSTAND/ _____ I DO NOT UNDERSTAND THE VIOLATION. CONTINUANCE GRANTED TO DATE: _/_/ 19_ BY: _____

REASON: _____

PLEA:
( ) GUILTY (✓) NOT GUILTY

( ) OTHER: _____

INMATE'S STATEMENT: Murphy requested an extention of time to obtain further information. Request denied Murphy has had 8 days from service to marshall his defense.

All I was doing is assisting a inmate with legal advice.

FINDINGS: (✓) GUILTY 009

( ) NOT GUILTY _____

EVIDENCE USED: Per policy wards, actions, gestures intended to harass or cause alarm. Class II infraction report, inmate statement.

SANCTIONS: 5 days detention suspended for 90 days pending clear conduct concurrent with 022 of the same date.

REASON(S): evidence states c/o Galle retaliated against inmate Murphy by issuing him Murphy a class II infraction, that statement indicates unprofessional actions which stand to intimidate the employee.

/s/ L.E. Bearley
HEARING OFFICER'S
SIGNATURE

I UNDERSTAND I MAY APPEAL THE ABOVE DECISION BY FILING A WRITTEN REQUEST FOR REVIEW AND MY REASON THEREFORE WITH THE BUREAU WARDEN WITHIN TWENTY FOUR (24) HOURS.

XK.M.,XU I DO - INTEND TO APPEAL.

_____ I DO NOT INTEND TO APPEAL.

X /s/ Kevin Murphy
INMATE'S SIGNATURE/
MSP#

cc: 1. Records Office
2. Parole Board
3. Unit Counselor
4. Inmate

MONTANA STATE PRISON
DISCIPLINARY HEARING DECISION

DATE: 3/2/ 1995

INMATE'S NAME: Murphy Kevin AO# 12810

REPORTED VIOLATION(S): 022

✓ I DO UNDERSTAND/ _____ I DO NOT UNDERSTAND THE VIOLATION. CONTINUANCE GRANTED TO DATE: _/_/ 19_ BY: _____

REASON: _____

PLEA:
( ) GUILTY (✓) NOT GUILTY

( ) OTHER: _____

INMATE'S STATEMENT: I sincerely believe I was doing something within the limits of my job discription. I believe these should not have been written by C.S. Shaw. I don't believe there is any limitations on when I help. I must help everyone. My motive was to help Tracy in his litigations.

FINDINGS: (✓) GUILTY 022

( ) NOT GUILTY_____

EVIDENCE USED: Class II infraction report inmates statement physical evidence (letter written to Pat Tracy by [Illegible] inmate Murphy.

SANCTIONS: 5 days detention suspended for a period of 90 days pending clear conduct.

REASON(S): The statement referring to c/o Galle making homo sexual advances to another inmate would result in disciplinary action against stated employee of the D.O.C..

/s/ L.E. Bearley
HEARING OFFICER'S
SIGNATURE

I UNDERSTAND I MAY APPEAL THE ABOVE DECISION BY FILING A WRITTEN REQUEST FOR REVIEW AND MY REASON THEREFORE WITH THE BUREAU WARDEN WITHIN TWENTY FOUR (24) HOURS.

XK.M. I DO INTEND TO APPEAL.

_____ I DO NOT INTEND TO APPEAL.

X /s/ Kevin Murphy
INMATE'S SIGNATURE/
MSP#

cc: 1. Records Office
2. Parole Board
3. Unit Counselor
4. Inmate

JEFFREY T. RENZ, Director
DAVID PECK, Legal Intern
Montana Defender Project
School of Law
University of Montana
Missoula, MT 59812
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
(HELENA DIVISION)

KEVIN MURPHY individually and on behalf of other persons similarly situated, Plaintiffs, -v- ROBERT SHAW, Unit Sergeant, LARRY BEARLEY, Hearings Officer, MICHAEL MAHONEY and MYRON BEESON, Bureau Wardens, and RICHARD DAY, Department of Corrections Director Defendants.	)	No. CV 95-62-H-CCL CLASS ACTION COMPLAINT For Declaratory and Injunctive Relief (Filed Oct. 24, 1995)

INTRODUCTORY STATEMENT

1. This is an action for injunctive relief pursuant to 42 U.S.C. § 1983 for redress for actions taken against Plaintiff for his work as an inmate law clerk.

JURISDICTION

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1343 (3) because plaintiffs' claims for relief are brought pursuant to 42 U.S.C. §1983.

PARTIES

3. Plaintiff Kevin Murphy was an inmate law clerk at the Montana State Prison trained by the Montana Defender Project to assist inmates with legal matters.

4. Defendants are individual employees of the Montana Department of Corrections and are named in their official capacities.

5. Defendant, Robert Shaw, is a unit sergeant at the Montana State Prison. Defendant Shaw was the shift supervisor on duty in Closed Unit II on February 17, 1995.

6. Defendant, Larry Bearley, is a hearings officer at the Prison responsible for determining whether alleged inmate misconduct violations have occurred.

7. Defendants, Michal Mahoney and Myron Beeson, are bureau wardens at the prison responsible for the establishment and enforcement of prison policies.

8. Defendant, Richard Day, is the director of the Department of Corrections, responsible for the overall policy development and management direction of the Prison.

9. All of Defendants' actions described below were taken under color of state law, custom, or practice.

CLASS ACTION

10. Plaintiff brings this action on his own behalf, as an inmate law clerk, and on behalf of other inmate law clerks both present and future.

11. Plaintiff also brings this action on his behalf, as an inmate, subject to the disciplinary policies of the Department of Corrections, and on behalf of other inmates, both present and future.

12. The nature of this action satisfies all of the requirements of Rule 23(a), (b) (1), (2), and (3) of the Federal Rules of Civil Procedure and should be maintained as a class action.

FACTS

13. On February 16, 1995, Plaintiff, acting as an inmate law clerk, wrote a letter to another inmate, Pat Tracy, in maximum security giving him advice and assistance regarding charges pending against him. Mr. Tracy was accused of assaulting a staff member, Officer Galle, in Close Unit I. A copy of this letter is attached as "Exhibit 1."

14. As a result of this letter, Defendant Shaw gave Plaintiff a Major Misconduct Violation Report (or "Class II.") Shaw alleged that Murphy violated Rule 009 (Insolence), Rule 022 (Interference with Due Process Hearings); and Rule 025 (Conduct which Disrupts or Interferes with the Security or Orderly Operation of the Institution.) Copies of these disciplinary violations are attached as "Exhibit 2."

15. Defendant Larry Bearley found Plaintiff guilty of violating Rule 009 and Rule 022. Bearley sanctioned Plaintiff to ten days suspended detention and three reclassification points. Copies of the Disciplinary Hearing Decisisons [sic] are attached as "Exhibit 3."

16. Defendant Mahoney denied Plaintiff's appeal of the disciplinary violations.

FIRST CLAIM FOR RELIEF

17. Based upon the facts alleged above, Defendants' practice of disciplining inmate law clerks for the content of their communications with other inmates deprived plaintiff of his rights secured by the First Amendment to the United States Constitution, specifically his right to free speech, and his right to provide legal assistance to other inmates free of punishment and intimidation, for which he is entitled to declaratory and injunctive relief pursuant to 42 U.S.C. § 1983.

SECOND CLAIM FOR RELIEF

18. Based upon the foregoing, Defendants' actions abridge the rights of inmates to access the courts by denying them the assistance of an inmate law clerk, for which Plaintiff is entitled to declaratory and injunctive relief pursuant to 42 U.S.C. § 1983.

THIRD CLAIM FOR RELIEF

19. Defendants' actions abridge the rights of inmates to seek a Writ of Habeas Corpus pursuant to 28

U.S.C. 2254, for which Plaintiff is entilted [sic] to declaratory and injunctive relief pursuant to 42 U.S.C. § 1983.

FOURTH CLAIM FOR RELIEF

20. Based upon the foregoing, Defendants' enforcement of Rule 009 deprived Plaintiff of his right to due process, and his right to free speech, guaranteed by the First and Fourteenth Amendments to the United States Constitution, for which he is entitled to declaratory and injunctive relief pursuant to 42 U.S.C. § 1983.

FIFTH CLAIM FOR RELIEF

21. Based upon the foregoing, Defendants' enforcement and application of Rule 022 deprived Plaintiff of his right to due process and his right to free speech guaranteed by the Fourteenth Amendment to the United States Constitution, for which he is entitled to declaratory and injunctive relief pursuant to 42 U.S.C. § 1983.

PRAYER FOR RELIEF

Plaintiffs respectfully pray that this honorable court:

1. Declare that Rule 009 is both vague and overbroad in violation of the First and Fourteenth Amendments to the United States Constitution.

2. Declare that Rule 022 is both vague and overbroad in violation of the First and Fourteenth Amendments to the United States Constitution.

3. Declare that the Defendants' practice of disciplining inmate law clerks based on the content of their advice

to other inmates violates the clerks' and inmates' rights pursuant to the First Amendment and 28 U.S.C. § 2254.

4. Issue preliminary and permanent injunctive relief enjoining defendants from:

a) Enforcing Rule 009;

b) Enforcing Rule 022; and

c) Disciplining inmate law clerks for communications with inmate clients.

5. Grant any additional or alternative relief which the Court deems just and equitable under the circumstances.

6. Award plaintiff his attorneys' fees and costs.

DATED: June 21, 1995

/s/ David Peck
DAVID PECK
Legal Intern
Montana Defender Project
Counsel for Mr. Murphy

/s/ Jeffrey T. Renz
JEFFREY T. RENZ
Director
Montana Defender Project
Counsel for Mr. Murphy

[Exhibits omitted.]

DAVID L. OHLER
LOIS ADAMS; DIANA LEIBINGER
Attorneys at Law
Department of Corrections
1539 11th Avenue
Helena, Montana 59620
(406) 444-5682
ATTORNEYS FOR DEFENDANTS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

KEVIN MURPHY, individually and on behalf of other persons similarly situated, Plaintiffs, vs. ROBERT SHAW, Unit Sergeant, LARRY BEARLEY, Hearings Officer, MICHAEL MAHONEY, Defendants.	Cause No. CV 95-62-H-CCL **ANSWER AND DEMAND FOR JURY TRIAL**

The Defendants answer the complaint as follows:

1. This paragraph states a legal conclusion, to which no response is necessary. To the extent that there are allegations of fact, they are denied.

2. This paragraph states a legal conclusion, to which no response is necessary. To the extent that there are allegations of fact, they are denied.

3. Admit.

4. Defendants admit that they are or were employees of the Montana Department of Corrections. The remainder of the paragraph states a legal conclusion, to which no response is necessary. To the extent that there are allegations of fact, they are denied.

5. Deny.

6. Deny. Defendants affirmatively allege that Mr. Bearley was previously employed as a Disciplinary Hearings Officer at Montana State Prison, and is currently employed as a Probation and Parole Officer with the Montana Department of Corrections.

7. Deny. Defendants affirmatively allege that Mr. Mahoney and Mr. Beeson were previously Bureau Wardens at Montana State Prison. Defendants further affirmatively allege that Mr. Mahoney is currently the Warden at Montana State Prison, and Mr. Beeson is currently a Deputy Warden at Montana State Prison.

8. Admit.

9. This paragraph states a legal conclusion, to which no response is necessary. To the extent that there are allegations of fact, they are denied.

10. Defendants are without sufficient information to form a belief as to the truthfulness of the allegations, and therefore they are denied.

11. Defendants are without sufficient information to form a belief as to the truthfulness of the allegations, and therefore they are denied.

12. This paragraph states a legal conclusion, to which no response is necessary. To the extent that there are allegations of fact, they are denied.

13. Defendants are without sufficient information to form a belief as to the truthfulness of the allegations, and therefore they are denied.

14. Defendants are without sufficient information to form a belief as to the truthfulness of the allegation in the first sentence, and therefore is denied. Mr. Shaw admits the second sentence. Mr. Shaw admits that the single document marked as Exhibit 2 and attached to the complaint is a copy of the Major Misconduct Report which he prepared on 2/17/95. Defendants deny the remainder of the allegations.

15. Mr. Bearley admits the first sentence. Mr. Bearley admits that he sanctioned the Plaintiff to ten days detention which was suspended. Mr. Bearley denies that he sanctioned Plaintiff to three reclassification points. Mr. Bearley admits that single document marked as Exhibit 3 and attached to the complaint is a copy of the Disciplinary Hearing Decision which he completed on 3/2/95. Defendants deny the remainder of the allegations.

16. Admit.

17. Deny.

18. Deny.

19. Deny.

20. Deny.

21. Deny.

22. Defendants deny any allegations contained in the complaint which are not specifically admitted in their answer.

FIRST DEFENSE

The Complaint fails to state a claim for which relief may be granted.

SECOND DEFENSE

The Defendants are state employees who are being sued for certain actions taken within the course and scope of their employment and are immune from liability pursuant to § 2-9-305, MCA.

THIRD DEFENSE

The Defendants did not personally participate in the actions complained of. The doctrine of *respondeat superior* does not apply in Section 1983 actions. *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978).

FOURTH DEFENSE

The Defendants are entitled to qualified immunity from suit because they acted in good faith.

FIFTH DEFENSE

The Plaintiff's claims of injury and damages, if any, were caused or contributed to by his own actions or the

acts of third parties which bars him from seeking relief from Defendants.

SIXTH DEFENSE

The Defendants are immune from any award to Plaintiff representing punitive damages pursuant to § 2-9-105, MCA.

SEVENTH DEFENSE

The Plaintiff failed to mitigate his damages, if any.

EIGHTH DEFENSE

Defendant Bearley is entitled to absolute immunity.

NINTH DEFENSE

The Plaintiff does not have standing.

TENTH DEFENSE

The complaint is not properly plead [sic] as a class action.

APPLICABILITY OF AFFIRMATIVE DEFENSES

At this time, Defendants are not certain as to what affirmative defenses may apply if this case proceeds to trial. Defendants expressly reserve the right to plead other affirmative defenses as discovery of the case progresses. Further, Defendants will dismiss any affirmative

defense at the pretrial conference which does not appear to be reasonably supported by the facts and/or the law.

WHEREFORE, the Defendants pray that:

1. Judgment be entered in their favor;
2. Plaintiff's complaint be dismissed with prejudice;
3. Plaintiff take nothing against the Defendants, and
4. The Court award the Defendants their costs and attorney's fees.

DEMAND FOR JURY TRIAL

Defendants demand a trial by jury on all issues which are triable by a jury. DATED this 13th day of March, 1996.

/s/ David L. Ohler
DAVID L. OHLER
Attorney for Defendants

[Certificate Of Service Omitted.]

JEFFREY T. RENZ
Sharon Noel, Intern
Montana Defender Project
School of Law
University of Montana
Missoula, Montana 59812
(406) 243-4823
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

KEVIN MURPHY, individually and on behalf of all other persons similarly situtated,	)	No. CV 95-62-H-CCL
Plaintiffs,	)	STATEMENT OF UNCONTROVERTED FACTS
-v-	)	
ROBERT SHAW, et al.,	)	
Defendants.	)	

Plaintiff Kevin Murphy respectfully submits the following statement of uncontroverted facts:

1. On February 16, 1995, Plaintiff Kevin Murphy was acting as an inmate law clerk. (Murphy affidavit ¶ 2).

2. On February 16, 1995, Murphy wrote a letter to inmate Pat Tracy giving him advice regarding disciplinary charges pending against him. (Murphy affidavit ¶ 3); Exhibit 1; Response to Request for Admission No. 4).

3. Tracy had asked for Murphy's assistance about two weeks earlier. (Murphy affidavit ¶ 3).

4. Defendant Robert Shaw was a shift supervisor at Montana State Prison on February 17, 1995. (Response to Request for Admission No. 1).

5. On February 17, 1995, Shaw gave Murphy a Major Misconduct Violation Report for writing the letter to Tracy. (Response to Request for Admission Nos. 5, 6, 7, 8; Exhibits 4).

6. Murphy was referred to Hearing Officer Larry Bearley, who found Murphy guilty of violating prison Rules 009 (Insolence) and 022 (Interference with due process hearings). (Response to Request for Admission No. 9).

7. Bearley sentenced Murphy to five days detention, execution of which was suspended for a period of 90 days. (Exhibit 2; Murphy affidavit ¶ 6).

8. Murphy appealed to Warden Mike Mahoney, who denied the appeal. (Exhibit 3; Murphy affidavit ¶ 7).

9. Defendant Rick Day is the Director of the Department of Corrections. In that capacity Day is responsible for overall policy development, management, direction, and administration of the Department. Admin. R. Mont. § 20.1.101(1) (d).

DATED: May 31, 1996

/s/ Jeffrey T. Renz
JEFFREY T. RENZ, one of
Plaintiff's Attorneys.

[Exhibits and Certificate Of Service Omitted.]

JEFFREY T. RENZ
DAVID C. PECK, Legal Intern
Montana Defender Project
School of Law
University of Montana
Missoula, Montana 59812
(406) 243-4823
Attorneys For Plaintiff

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MONTANA
(HELENA DIVISION)

KEVIN MURPHY, individually and on behalf of other persons similarly situated Plaintiffs, -v- ROBERT SHAW, Unit Sergeant, LARRY BEARELY, Hearings officer, MICHAEL MAHONEY and MYRON BEESON, Bureau Wardens, and RICHARD DAY, Department of Corrections Director Defendants.	*	No. CV 95-62-H-CCL AFFIDAVIT OF KEVIN MURPHY

STATE OF MONTANA)
: ss
County of Powell)

I, KEVIN MURPHY, being first duly sworn state:

1. I am an inmate confined at Montana State Prison, Dear Lodge, Montana.

2. On or about February 16, 1995, I was working as an inmate law clerk while confined at Montana State Prison. A copy of my work assignment is attached hereto as Exhibit 1.

3. On or about February 1, 1995, A fellow inmate, Pat Tracy, had requested my assistance, through another inmate, on charges pending against him for assaulting a prison officer. At this time Pat Tracy was housed in the Maximum Security wing and I was unable to see him personally. On or about February 16, 1995, I wrote a letter to Pat Tracy, in which I gave him legal advice concerning the charges pending against him. The letter attached to plaintiff's complaint as "Exhibit 1" is a true and accurate copy of this letter.

4. On or about February 17, 1995, Unit Sergeant Robert Shaw read the above mentioned letter.

5. As a result of the letter, defendant Shaw gave me three Major Misconduct Violation Reports or ("Class IIs"). In these Class IIs defendant Shaw alleged that based on the content of the letter, I violated Rules 009, 022 and 025. The Major Misconduct Violation Reports attached to plaintiff's complaint as "exhibit 2" are true and accurate copies of those Class IIs.

6. Hearings officer Larry Bearley found me guilty of violating Rules 009 and 022 and sanctioned me to ten days suspended detention. As a result I also received three reclassification points.

7. Bureau Warden Mike Mahoney denied my appeal of the above mentioned disciplinary violations

8. I know of other inmates at Montana State Prison who have been similarly harassed for providing legal assistance to other inmates.

FURTHER AFFIANT SAYETH NOT.

DATED this 1st day of ~~April~~ May, 1996.

/s/ Kevin Murphy
Kevin Murphy

SUBSCRIBED AND SWORN to before me this 1 day of ~~April~~ May, 1996.

/s/ Kenneth R. Cozly
Notary Public for the State of Montana Residing at
DearLodge, MT

(Notarial Seal)

My commission expires
11-19-97

JEFFREY T. RENZ
Sharon Noel, Intern
Montana Defender Project
School of Law
University of Montana
Missoula, Montana 59812
(406) 243-4823
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

KEVIN MURPHY, individually and on behalf of all other persons similarly situated, Plaintiffs, -v- ROBERT SHAW, et al., Defendants.	No. CV 95-62-H-CCL PLAINTIFF'S STATEMENT OF DISPUTED ISSUES

Plaintiff submits the following Statement of Disputed Issues in opposition to Defendants' Motion for Summary Judgment.

1. "High side" law clerks were permitted to assist inmates in Maximum Security and Administrative Segregation even though they were not permitted to see those inmates face to fact. (Murphy Supp. Aff. ¶¶ 3, 4.)

2. "High side" law clerks were not restricted to providing assistance only to inmates assigned them by the Library Director. (Murphy Supp. Aff. ¶ 5.)

3. Murphy had assisted Pat Tracy many times over a period of ten years. (Murphy Aff. ¶ 6; Tracy Aff. ¶ 9).

4. Murphy received a request for assistance from Tracy in February 1995. (Murphy Aff. ¶ 7; Tracy Aff. ¶ 7).

5. Tracy wanted help in framing issues in connection with charges against him. (Tracy Aff. ¶ 8).

6. Murphy conducted an investigation which led to his letter to Tracy. (Murphy Aff. ¶¶ 7, 8).

7. The purpose of Murphy's letter was to help Tracy get his charges reduced. (Murphy Aff. ¶ 9).

8. Murphy did not believe or expect that his letter would be viewed by Galle. (Murphy Aff. ¶ 10).

9. Tracy never received the letter and pled guilty without pursuing or asserting the defense suggested by Murphy. (Tracy Aff. ¶ 11, 12).

10. Montana State Prison's policy regulating inmate-to-inmate correspondence does not prohibit such correspondence, but provides that such correspondence may be read by prison officers. (Pl. Ex. 2).

11. The policies under which Murphy was disciplined were found in Montana State Prison Policy No. 15-001. (Pl. Ex. 1).

12. The Inmate Law Clerk program encompasses, authorizes, and encourages the kind of assistance Murphy provided Tracy, for example, "offering advice concerning issues, format, and proper procedure," "defin[ing] issues in matters to be addressed through legal channels." (Pl. Ex. 3).

13. The Prison decided to satisfy inmates' right of access to the courts by providing a mix of law library, inmate law clerks, and law student assistance. (Pl. Ex. 4, at 1).

DATED: August 1, 1996

/s/ Jeffrey T. Renz
JEFFREY T. RENZ
Montana Defender Project
Attorney for Plaintiff

[Exhibits And Certificate Of Service Omitted]

JEFFREY T. RENZ
SHARON M. NOEL, Legal Intern
Montana Defender Project
School of Law
University of Montana
Missoula, Montana 59812
(406) 243-4823
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

KEVIN MURPHY, individually and on behalf of all other persons similarly situated Plaintiffs, -v- ROBERT SHAW, et al., Defendants.	)	No. CV 95-62-H-CCL AFFIDAVIT OF PAT TRACY

STATE OF MONTANA)
: ss
County of Powell)

Before the undersigned, a notary public for the State of Montana, personally appeared Pat Tracy, who, having been duly sworn, on his oath deposes and says that this affidavit is made on his personal knowledge, and that if he were to appear as a witness in the above-captioned matter, he would competently testify as follows:

1. I am an inmate confined at Montana State Prison, Deer Lodge, Montana.

2. I am from Butte, Montana.

3. I am housed on the high security side of Montana State Prison and was housed there in late 1994, early 1995.

4. On August 11, 1994, I was charged by information with felony assault.

5. On August 11, 1994, I asked for my own attorney.

6. On August 25, 1994, I was appointed counsel.

7. I requested the legal assistance of Kevin Murphy, an inmate law clerk through Dave Beatty, prison librarian, through prison kites, and by passing the word to Murphy.

8. I wanted Kevin Murphy's assistance with those charges pending against me and with framing the issues.

9. Kevin Murphy has provided me with legal assistance many times dating back to the mid-1980's including an appeal to the 9th circuit.

10. I was told that I could only see the low side law clerks. A low side law clerk came to speak with me. I refused to talk to him because this law clerk had a reputation for disclosing information obtained from meeting with inmates.

11. I never received the February 16, 1995 letter sent by Kevin Murphy to me and did not get a copy of it until June 1996.

12. To avoid the risk of a persistent felony offender enhancement by the County Attorney, I pled guilty to felony assault.

FURTHER AFFIANT SAYTH NOT.

DATED this 12th day of July, 1996.

/s/ Pat Tracy
Pat Tracy

SUBSCRIBED AND SWORN TO BEFORE ME this 12 day of July, 1996.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove first written.

/s/ [Illegible]
Notary Public,
State of Montana
Residing at _____,
Montana
My Commission
expires: _____

(Notarial Seal)

NOTARY PUBLIC for the State of Montana
Residing at Deer Lodge, Montana
My Commission Expires
September 3, 1998

JEFFREY T. RENZ
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Montana Defender Project
School of Law
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(406) 243-4823
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

KEVIN MURPHY, individually and on behalf of all other persons similarly situated Plaintiffs, -v- ROBERT SHAW, et al, Defendants.	)	No. CV 95-62-H-CCL SUPPLEMENTAL AFFIDAVIT OF KEVIN MURPHY
STATE OF MONTANA County of Powell	) : ss	

Before the undersigned, a notary public for the State of Montana, personally appeared Kevin Murphy, who, having been duly sworn, on his oath deposes and says that this affidavit is made on his personal knowledge, and that if he were to appear as a witness in the above-captioned matter, he would competently testify as follows:

1. I am from Butte, Montana.

2. I am housed on the high security side of Montana State Prison.

3. I have assisted inmates in both the high security and maximum security units. This was true even during the period when the high security inmates did not go to maximum security. Although we could not go to the maximum security unit, we could still correspond with and assist inmates there. I had never been disciplined for doing this. All of this was done with the knowledge and approval of the library director and other members of the prison staff.

4. No one ever directed that I, or any other law clerk, stop providing or continuing to provide assistance to maximum security inmates or inmates in administrative segregation (lockdown).

5. On the high security side the process of providing assistance to inmates was informal. Sometimes inmates wanting legal assistance would send in a kite to the library director, Dave Beatty, and he would assign those inmates to a law clerk. Sometimes inmates would walk-in to the library during library hours and request assistance from Dave Beatty. In those cases the process was "first come, first served" unless the inmate asked one of the law clerks specifically for help. Finally, inmates sent in written requests addressed to a particular law clerk and that law clerk would respond directly.

6. I have a history of assisting Pat Tracy. Beginning in the mid-1980's, I assisted Pat in my capacity as an inmate law clerk with numerous writs and appeals in both the

state and federal courts, including an appeal to the 9th circuit.

7. In early 1995, I had been out of prison for a short time before Pat asked for my assistance. On or about February 1, 1995, I received a request from Pat for my assistance. I began to investigate the assault charges against Pat.

8. Through my investigation I found that Officer Galle had made homosexual comments to other inmates and that a petition was circulating accusing him of wrongful conduct and requesting his transfer.

9. On or about February 16, 1995, I wrote a letter to Pat Tracy to try and help him and get the charges dropped to a misdemeanor.

10. I was aware that Montana State Prison officials would read the contents of my letter to Pat Tracy. I did not believe that Officer Galle would read the letter. In fact, to this day, I do not think that Officer Galle has seen it.

FURTHER AFFIANT SAYETH NOT.

DATED this 12th day of July, 1996.

/s/ Kevin Murphy
Kevin Murphy

SUBSCRIBED AND SWORN TO BEFORE ME this 12th day of July, 1996.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove first written.

/s/ [Illegible]
Notary Public,
State of Montana
Residing at _____,
Montana
My Commission
expires: _____

(Notarial Seal)

NOTARY PUBLIC for the State of Montana
Residing at Anaconda, Montana
My Commission Expires August 24, 1998

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

KEVIN MURPHY, individually and on behalf of other persons similarly situated Plaintiffs, -v- ROBERT SHAW, et al., Defendants.	No. CV 95-62-H-CCL REQUEST FOR JUDICIAL NOTICE (Filed Aug. 2, 1996)

Plaintiff Kevin Murphy respectfully requests this Court to take Judicial Notice of the following facts or documents pursuant to Rule 201 of the Federal Rules of Evidence:

1. The Montana State Prison policy statement on Inmate Discipline, MSP 15-001, revised September 1989 – Rev. 2, marked and attached as exhibit 1.

2. The Montana State Prison policy statement on Inmate Correspondence, MSP 16-001, Revised October, 1992, with attachment #1 included, marked and attached as exhibit 2.

3. The Inmate Legal Clerk program description developed between the Montana Defender Project and Montana State Prison, marked and attached as exhibit 3.

4. The agreement between the Department of Corrections and University of Montana School of Law, marked and attached as exhibit 4.

5. That the Montana State Prison population at Deer Lodge, Montana averages between 1220 and 1340 inmates.

This Court may take judicial notice of facts and documents "at any stage of the proceeding." Rule 201(f), Fed. R. Evid. Judicial notice is mandatory when requested by a party if the Court is provided "the necessary information." Rule 201(d).

WHEREFORE Mr. Murphy respectfully prays that this court take judicial notice of the foregoing.

DATED this 8th day of August, 1996.

/s/ Jeffrey T. Renz
JEFFREY T. RENZ
One of Plaintiff's Attorneys

/s/ Sharon M. Noel
SHARON M. NOEL, Intern

[Exhibits And Certificate Of Service Omitted]

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF MONTANA
HELENA DIVISION

KEVIN MURPHY, individually and on behalf of other persons similarly situated Plaintiffs, -v- ROBERT SHAW, et al., Defendants.	)	No. CV 95-62-H-CCL MEMORANDUM IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE

Petitioner Kevin Murphy has asked this Court to take judicial notice of the following facts or documents:

1. The Montana State Prison policy statement on Inmate Discipline, MSP 15-001, revised September 1989 – Rev. 2.

2. The Montana State Prison policy statement on Inmate Correspondence, MSP 16-001, Revised October, 1992, with attachment #1 included.

3. The Inmate Legal Clerk program description developed between the Montana Defender Project and Montana State Prison.

4. The agreement between the Department of Corrections and University of Montana School of Law.

4. [sic] The Montana State Prison population at Deer Lodge, Montana averages between 1220 and 1340 inmates.

These documents and facts can be catagorized into two areas: policy and regulatory statements of Montana State Prison and generally known facts.

Rule 201(b) of the Federal Rules of Evidence states "a judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." The doctrine of judicial notice permits a judge to consider a generally accepted or readily verified fact as proved without requiring evidence to establish it. *United States v. Berrojo*, 628 F.2d 368 (5th Cir. 1980). Since the Montana State Prison population is readily known and can be easily verified, this Court may take notice of the fact that the prison population averages between 1220 and 1340 inmates.

Courts have also taken judicial notice of policies and procedures and regulations. In *United States v. George*, 971 F.2d 1113 (4th Cir. 1992), the Court took judicial notice of the county police's published policies and procedures for inventory searches. In *Northern Heel Corporation v. Compo Industries, Inc.*, 851 F.2d 456 (1st Cir. 1988) and *National Agricultural Chemicals Association v. Romminger*, 500 F.Supp. 465 (D.C. Cal. 1980) the Courts took judicial notice of OSHA regulations and California regulations.

Likewise, this Court may take judicial notice of Montana State Prison's policies and regulations governing inmate discipline/correspondence, the Department of Corrections/School of Law agreement and the law clerk program. All three documents are statements of policy and/or regulations governing the conduct of inmates or relationship with the University of Montana.

Since the documents are general policy or regulatory statements of Montana State Prison and, therefore, readily verifiable and the prison population is a generally known fact, petitioner requests this Court to judicially notice of his requests as meeting the standard set forth in Rule 201(b) of the Federal Rules of Evidence.

DATED: August 1, 1996

/s/ Jeffrey T. Renz
JEFFREY T. RENZ
One of Plaintiff's Attorneys

[Certificate of Service Omitted.]

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ATTORNEYS FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

KEVIN MURPHY, Plaintiff, vs. ROBERT SHAW, Unit Sergeant; LARRY BEARLEY, Hearings Officer; MICHAEL MAHONEY, Defendants.	)	Cause No. CV 95-62-H-CCL **AFFIDAVIT OF MIKE MAHONEY**

STATE OF MONTANA)
:
Powell County)

THE UNDERSIGNED, Mr. Mike Mahoney, have first been sworn upon oath, deposes and says:

1. I am employed as the Montana State Prison (MSP) Warden.

2. Duties which I perform in the scope of my employment are to supervise the general operations of Montana State Prison, another duty I perform is to know the policies and procedures of MSP.

3. I am very familiar with Montana State Prison Policy 16-001 concerning inmate correspondence.

4. Policy 16-001 helps maintain the order of the institution by discovering other violations of institutional rules and plans to violate institutional rules such as:

a. rioting;

b. plots about correctional staff; and

c. plots to have inmates lie in due process hearings.

5. Policy 16-001 furthers the interests of institutional security, institutional order and inmate rehabilitation through the examination of inmate mail to maximum security.

6. Policy 16-001 protects the institution from inmates communicating escape plans to each other, arranging assaults or other violent acts on other inmates and from forming gangs and allowing communicating between gang members.

7. Policy 16-001 protects the security of the facility and furthers the safety of the correctional staff and inmates.

8. Policy 16-001 helps prevent inmates from planning, threatening or carrying out illegal activities through correspondence which include blackmail, extortion, conspiracy to commit assaults or homicides, dissemination of

drugs, sale of drugs and dissemination of other contraband.

9. No mail other than that listed in Paragraph 1, A, of Policy 16-001 is privileged correspondence which exempts certain categories of correspondence only serving the interest of allowing inmates to correspond with lawyers and other officials uncensored while preserving the security and safety concerns listed above.

10. The MSP Policy 16-001 does not exempt any inmates, including law clerks, because every inmate poses a potential risk to the security and safety of the institution through correspondence.

11. Persons who are inmate law clerks are not listed in Paragraph 1, A, of Policy 16-001.

12. Inmate law clerks are not an exempt category and thus have no special correspondence privileges.

13. Inmate law clerks are expected to correspond verbally with their duly-assigned clients.

14. All inmates should know that mail to maximum security may be opened and read according to the correspondence Policy 16-001.

15. The mail from Inmate Murphy to Inmate Tracy was not privileged according to MSP Policy 16-001.

16. Inmate Tracy was a maximum security inmate at the time Inmate Murphy sent the letter to Inmate Tracy and Inmate Tracy's mail was subject to being opened and read according to the policy.

Further affiant sayeth not.

DATED this 2 day of April, 1997.

/s/ Mike Mahoney
MIKE MAHONEY

SUBSCRIBED AND SWORN to before me this 2nd day of April, 1997.

/s/ [Illegible]
NOTARY PUBLIC for the
State of Montana
Residing at Helena, Montana
My Commission Expires
April 15, 2000

[seal]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KEVIN MURPHY, Plaintiff-Appellant, v. ROBERT SHAW, LARRY BEARLEY, MICHAEL MAHONEY, MYRON BEESON, and RICHARD DAY, Defendants-Appellees.	No. 97-35989 DC# CV 95-62-CCL D. Montana ORDER (Filed March 2, 1999)

The district court indicated that Appellant Kevin Murphy had been released on parole. *See* Order at 2 (D. Mont. filed Sept. 10, 1997). Because Mr. Murphy's release on parole raises issues of mootness, *see, e.g., Reimers v. Oregon*, 863 F.2d 630, 632 (9th Cir. 1988), he is hereby directed to inform this court, within seven (7) days of the filing of this order, of his current status: Is he currently incarcerated? If so, where? Is he currently charged or has he been convicted of felonies allegedly committed subsequent to his release on parole? Has his parole been revoked?

/s/ For The Court,
Cathy Catterson,
Clerk of Court
by: [Illegible]
Deputy Clerk

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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KEVIN MURPHY, individually and on behalf of all other persons similarly situated, Plaintiffs and Appellants, -v- ROBERT SHAW, et al., Defendants and Appellees.	)	No. 97-35989 U.S.D.Ct. No. CV 95-62-H-CCL APPELLANT'S REPORT ON STATUS

Pursuant to the Court's Order of March 2, 1999, the Appellant Kevin Murphy states:

1. The Appellant is currently confined to the Montana State Prison, Great Falls Regional Prison. It is counsel's understanding that his confinement results from conviction of an additional felony.

2. Appellant's confinement was reflected by his Prisoner Authorization Form, filed with this court, pursuant to 28 U.S.C. § 1915(b), on February 12, 1998.

DATED: March 5, 1999

/s/ Jeffrey T. Renz
JEFFREY T. RENZ
Montana Defender Project
Attorney for Appellant

[Certificate of Service Omitted.]